

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA

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PROCEEDINGS BEFORE THE 494TH)
GRAND JURY IN RE:)
)
) 494 GJ 156
)
)
STEPHEN WETZEL, (001),)
ANDREW KUNASEK, (002), SANDRA)
WILSON, (003), GARY DONAHOE,)
(004), THOMAS IRVINE, (005),)
DAVID SMITH, (006),)
)
)
Defendants.

Phoenix, Arizona
January 6, 2010
9:15 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

LYDIA ESTRADA-GRAY, RPR
Certified Reporter
CERTIFICATE No. 50155

A P P E A R A N C E S

DEPUTY COUNTY ATTORNEY:

MICHAEL BAKER

COUNTY GRAND JURORS PRESENT:

Phoenix, Arizona
January 6, 2010
9:15 a.m.

P R O C E E D I N G S

(Whereupon, the following proceedings took place
in the Grand Jury Room.)

MR. BAKER: This is 495 GJ 156. The
investigation of Steven Wetzel, Andrew Kunasek, Sandra
Wilson, Gary Donahoe, Thomas Irvine, and David Smith.
This is a continuation of the deliberations from Monday,
January 4th, 2010.

Ladies and gentlemen, about 5:30 last night
I received a telephone call from Ms. Aubuchon, informing
me that there has been a development in the investigation
and the processing of this case, and asking me to request
that the Grand Jury remain in recess as to this
investigation.

I must inform you that you are under no
obligation to do so, but you may do so.

I will also inform you that Ms. Aubuchon
indicated to me that she anticipated that sometime during
the course of your tenure, that she would be in a
position to come back with -- after whatever the

1 development was that took place, and a continuance in
2 some fashion.

3 So at this point, I will ask that you
4 deliberate on the State's request to remain in recess
5 with regard to this investigation.

6
7 (Thereupon, the Deputy County Attorney and the
8 Court Reporter were excused from the Grand Jury Room,
9 were subsequently recalled into the Grand Jury Room, and
10 the following proceedings took place:)

11
12 JUROR We have a procedural question.

13 MR. BAKER: Certainly.

14 JUROR : If we vote to put this in recess,
15 if we feel that we want to bring some sort of conclusion
16 to this case before we leave here on the 31st of March,
17 can we request to have it be brought back?

18 MR. BAKER: Actually, the County Attorney cannot
19 take a case away from you without your concurrence. One
20 of the things that I would propose to you, is that you
21 could direct the County Attorney's Office to report to
22 you periodically about when there might be a resolution.
23 Sort of like a tickler system, okay? That might give you
24 further insight as things progress, okay?

25 I was told that the anticipation was that it

1 would be brought back for conclusion before this panel,
2 before the expiration of your term.

3 In addition, I can tell you, however, also,
4 that what happens rarely, that a panel can be continued
5 to finish up a case. So, I don't know. Perhaps that
6 will assist you in --

7 JUROR What do you mean by that?

8 JUROR They can extend our time.

9 JUROR For that single case?

10 JUROR It's got to come back to us, in
11 other words.

12 JUROR You tell me.

13 MR. BAKER: Yeah. We can extend you.

14 JUROR In other words, in terms of the
15 waiting game, the indictment that is brought before the
16 494th Grand Jury cannot, because their term expires, it
17 cannot just be carried over to another Grand Jury, the
18 same indictment?

19 MR. BAKER: Normally, not. We cannot go to
20 another Grand Jury during the interim, without you
21 releasing the case. We can't just form shop in that
22 fashion.

23 JUROR So you talked about a tickler
24 system, but if we come up in a month-and-a-half's time,
25 we say hey, you had a month-and-a-half to work on this,

1 we want to see this come back.

2 MR. BAKER: I can tell you from what little I
3 know of the process now, it's unlikely it will be back
4 within a month-and-a-half, given what little I know. But
5 I also know this is the newest of the panels that we
6 basically had going on Monday. You started in December,
7 you have a four month term. So basically you're looking
8 at what, the early part of April?

9 JUROR End of March, March 31st.

10 MR. BAKER: Almost the 1st of April.

11 JUROR We have that date in stone.

12 JUROR Okay. Let's say
13 it continues after April 1st. Can we as a jury be
14 continued and be called back to hear it?

15 MR. BAKER: That is a possibility.

16 JUROR Because a lot of -- this is really
17 important to a lot of us. It just seems like it's an
18 obstruction of justice if we go through all of this, then
19 the jury is gone, and we don't continue this on.

20 MR. BAKER: I certainly understand that. What I
21 can tell you is that, if the -- before anyone else can
22 hear it, you would have to release it.

23 I, however, am never in a position to
24 perfectly forecast the future. I can only convey to you
25 what has been conveyed to me. That is, the anticipation

1 is, okay, that sometime more likely in March, than
2 earlier, okay, there may be a resolution of the
3 development that has caused the request to continue the
4 recess on this case.

5 My suggestion to you, what I refer to as
6 like a tickler kind of thing, you could request that
7 somebody come back and give you an update periodically.

8 JUROR Of the development?

9 MR. BAKER: Of where we are, and when we are
10 likely to be back.

11 JUROR Also, the charges? Update on
12 the charges? They can update us on what new things they
13 come across, or not?

14 MR. BAKER: Well, if the County Attorney were to
15 seek additional charges, okay, or a proposed draft
16 changes, then there would probably have to be, you know,
17 further testimony for that anyhow.

18 JUROR One last question. Can they
19 drop charges, and give us some other less charges? Is
20 that possible? Or is this all straight through?

21 MR. BAKER: If I understand your question
22 correctly, let me answer it this way. Keep in mind that
23 any draft indictment that is given to you is only a
24 draft. If you chose to return a draft, you do not have
25 to return the draft that has been presented to you. You

1 may amend it in whatever fashion you like. You may
2 reject it entirely, okay?

3 JUROR And can they change it?

4 MR. BAKER: Okay. Can -- the County Attorney
5 basically --

6 JUROR Drop some charges or add some?

7 MR. BAKER: If a request to do that were to come
8 through you, then we would have to come back, let you
9 know about that.

10 But I can also tell you this, because I
11 think this may have some benefit for your understanding
12 of the system in general. Should you return an
13 indictment, okay, the County Attorney is free to move to
14 amend it substantively with the concurrence of the Court
15 and/or, the County Attorney is always in a position to
16 move to dismiss any or all charges against a potential
17 defendant, okay?

18 You're also talking about lesser includeds,
19 to a certain extent. I think that is part of your
20 thought here.

21 I can also tell you that ultimately when
22 cases go to trial, if they go to trial, then juries are
23 free to, also trial juries are free to come back with
24 lesser includeds, where the law provides it. This
25 offense is a lesser included of a larger offense, or the

1 greater offense. That may be more information than you
2 need or may not be.

3 JUROR One last thing. Can charges be
4 added to this, or is this as -- I mean, could the County
5 Attorney add charges to it?

6 MR. BAKER: If the County Attorney were to seek
7 any changes in any draft given to you, that would have to
8 be done as part of this process. In other words, you
9 couldn't return a draft, and we can't just add on to it.

10 JUROR No, I understand that. During
11 this recess, can other charges be added to this?

12 MR. BAKER: I guess that is a possibility, okay?

13 JUROR That answers my question. Thank
14 you.

15 JUROR So we are not privy to know what
16 the new development is?

17 MR. BAKER: I am not privy to know entirely.

18 JUROR Can we request to be filled in, at
19 least on the seeds of it?

20 MR. BAKER: You can make that request. I will
21 see if I can accommodate that.

22 JUROR Okay. I think we need some time.

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1 (Thereupon, the Deputy County Attorney and the
2 Court Reporter were excused from the Grand Jury Room,
3 were subsequently recalled into the Grand Jury Room, and
4 the following proceedings took place:)

5

6 JUROR Okay. What we have decided is
7 that we do want to put this into recess, but we would
8 like weekly updates on Monday.

9 MR. BAKER: Might I suggest Wednesdays, rather
10 than Mondays? The only reason why I am suggesting that
11 is, it's unlikely that I will be available on Mondays to
12 come over here, okay?

13 JUROR Okay.

14 MR. BAKER: But I will be available on Wednesdays
15 to come over here. And I suspect that it will fall to me
16 to do the follow-up.

17 JUROR Is there a time that we can request
18 that would be best for you, say 9:00 a.m.?

19 MR. BAKER: I will be here at 9:00.

20 JUROR So they are not just bringing it
21 sometime during the day, then you have to fit your
22 schedule around us. So we can say 9:00 a.m. every
23 Wednesday?

24 MR. BAKER: Works for me.

25 JUROR Work for everybody?

1 Okay. That is what we would like to do.

2 MR. BAKER: Okay. In that case the record should
3 reflect that the Grand Jury has chosen to go into recess,
4 and is directing the County Attorney to give them -- what
5 did you say, weekly updates?

6 JUROR Weekly, on Wednesdays.

7 MR. BAKER: Okay. Wednesday 9:00 a.m.

8

9 (Whereupon, a recess is held.)

10

11 MR. BAKER: Back on the record with regard to 494
12 GJ 156.

13 The record should reflect that I have
14 provided copies of envelopes for people to maintain their
15 notes in this case. In addition, the draft indictment in
16 the minutes that were presented to the Grand Jury on
17 Monday, they were returned to me because we were running
18 so late, had to get out of here.

19 I have also placed in an envelope marked 494
20 GJ 156, draft indictment and the minutes. I will have
21 the clerk maintain those, along with your notes.

22 JUROR Should we mark 156 on these?

23 MR. BAKER: You can if you want. I just figure
24 we put them all together. Hopefully put your name on it
25 so you can retrieve yours.

1 The record for this morning should reflect
2 that the entire Grand Jury was present, with the
3 exception of Grand Jurors Guzman and Snider. Those Grand
4 Jurors were also absent on Monday, January the 4th.

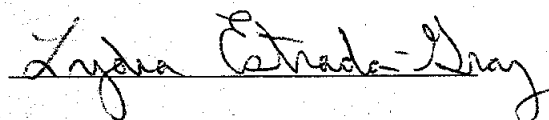
5 Neither of those should participate in the
6 further deliberation as to this case, although I don't
7 think there will be any problem if they are here when the
8 weekly updates were provided to you.

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12 (End of proceedings.)
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C E R T I F I C A T E

I, LYDIA ESTRADA-GRAY, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of the proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 9th day of June, 2010.


LYDIA ESTRADA-GRAY, RPR
Certified Reporter #50155